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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 368 (DLC)

5 MAXIM CHUKHAREV,

6 Defendant.

7 -----x
8 January 30, 2015
9 10:15 a.m.

10 Before:

11 HON. DENISE L. COTE

District Judge

12
13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 BY: CHRISTINE MAGDO

16 ANDREW GOLDSTEIN

KEVIN MOSLEY

17 Assistant United States Attorneys

18 SARAH KUNTSLER

SUSAN KELLMAN

19 Attorneys for Defendant

20 ALSO PRESENT: TATE JARROW, Secret Service

JEREMIAH HAYNIE, Internal Revenue Service

21 DAGOBERTO ORRANTIA, Spanish Interpreter

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(Case called)

(In open court)

MS. MAGDO: Christine Magdo, assistant United States attorney on behalf of the government. With me at counsel table is Andrew Goldstein, assistant United States attorney for the Southern District of New York, Kevin Mosley, special assistant U.S. attorney from the Department of Justice, Secret Service agent Tate Jarrow and IRS special agent Jeremiah Haynie. Good morning.

THE COURT: Thank you.

MS. KUNSTLER: Your Honor, good morning. Sarah Kunstler for Maxim Chukharev. And with me at counsel table is Susan Kellman who was also appointed on the case. Thank you.

THE COURT: Welcome, everyone.

MS. KELLMAN: Good morning, Judge.

THE COURT: I want to observe that we have an interpreter present in the courtroom who is certified to interpret between Spanish and English. And my understanding is that Mr. Chukharev does not wish the services of the interpreter during this proceeding but would appreciate having the interpreter present on a stand-by basis in case there is a word or a phrase or a passage in these proceedings for which he would like the interpreter's assistance. Have I correctly stated the understanding, Ms. Kunstler?

MS. KUNSTLER: Yes, that's correct, your Honor.

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1 THE COURT: Thank you. Ms. Kunstler, have both you
2 and your client read the presentence report?

3 MS. KUNSTLER: Yes, we have, your Honor.

4 THE COURT: Now, did the defendant require that report
5 to be translated to him, or did he read it in English?

6 MS. KUNSTLER: Your Honor, I had a Spanish interpreter
7 available, but he did not require it translated into Spanish.

8 THE COURT: Thank you. And I take it you discussed
9 the report with each other after reading it?

10 MS. KUNSTLER: Yes, we did.

11 THE COURT: And do you have any objections to the
12 report other than what might be contained in your written
13 sentencing submissions to me?

14 MS. KUNSTLER: No, your Honor.

15 THE COURT: Thank you. The presentence report will be
16 made part of the record in this case and placed under seal. If
17 an appeal is taken, counsel on appeal may have access to the
18 sealed report without further application to this court.

19 I have received sentencing submissions. I have the
20 government's sentencing submission of January 23, which was
21 filed on ECF. I have the defendant's sentencing submission of
22 January 16, which was filed in redacted form, as I understand
23 it, along with an appendix of exhibits which are letters, and I
24 have read all of that material.

25 This is a case in which there was a guidelines

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1 stipulation, a plea agreement between the government and
2 defendant, with the calculation based on an offense level of 29
3 and a Criminal History Category of I. That led to a guidelines
4 range of 87 to 108 months in prison. However, the plea which
5 the defendant entered carries with it a maximum term of
6 imprisonment of five years or 60 months and, therefore, the
7 maximum sentence that could be imposed today is 60 months even
8 though the guidelines range is higher. I adopt the PSR's
9 determination on the guidelines range, and it is as I have just
10 described, so it is consistent with the parties' plea
11 agreement.

12 The probation department recommends a sentence of 36
13 months. There is a request by the defendant here for a
14 nonguideline sentence, that is, a sentence below 60 months, as
15 requested in their sentencing submission and, I am sure, as I
16 will hear orally in a moment. Among the arguments made by the
17 defendant for a sentence below 60 months is a comparison with a
18 co-defendant who received a 60 month sentence and whose conduct
19 was far more integral to the operation of the enterprise than
20 this defendant's.

21 As I understand it, the defendant was arrested in
22 Costa Rica on May 24, 2013 and extradited to this country on
23 March 27, 2014. The conditions of imprisonment in Costa Rica
24 were horrendous and are described in the sentencing submissions
25 to me, principally due to overcrowding and everything that

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1 flowed from that.

2 As I understand it, the government is not going to
3 seek an order of restitution or forfeiture.

4 MS. MAGDO: That's correct, your Honor.

5 THE COURT: So, you don't need to turn to those
6 issues.

7 Mr. Chukharev pled guilty to essentially understanding
8 that the business Liberty Reserve was required to have a
9 license for its operations and did not. I reviewed the plea
10 allocution, so I'm just summarizing it.

11 The government's sentencing letter indicates that it
12 is not contesting Mr. Chukharev's contention that he had no
13 contemporaneous knowledge of the purpose of the Liberty Reserve
14 companies with which he was working, or knowledge or control
15 over these accounts. It is undisputed that the Liberty
16 Reserve's operation was conducted in a way that assisted people
17 engaged in fraud. It is also, as I understand it, undisputed
18 that Mr. Chukharev was very involved with the efforts to
19 deceive the Costa Rican authorities who were involved with
20 making sure that the Liberty Reserve operations were not
21 engaged in money laundering or other activities that fell under
22 the jurisdiction of the Costa Rican agency. The regulatory
23 agency is known by the acronym SUGEF.

24 So, that's a sort of description of the background, as
25 I understand it. I state it so that if I have anything wrong

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1 there, I'm going to count on the parties to make sure that they
2 correct my understanding and impression.

3 I think the issue of comparison with the
4 co-defendant's sentence is a particularly interesting one in
5 this case. Both sentences -- the one I imposed before and
6 today's sentence -- are being imposed within the constraint of
7 a maximum term of imprisonment that falls far below the
8 sentencing guidelines range. So, while generally it's very
9 important to think about sentences given to other defendants
10 who should be properly compared to the defendant, this
11 statutory cap adds a layer of complexity to that analysis.
12 But, nonetheless, I consider it an important part of what I
13 must focus on today.

14 Also, Mr. Chukharev's presentation about his
15 background and the way he has lived his life up until the time
16 his technical skills brought him into contact with the people
17 at Liberty Reserve, or prompted them to offer him a job because
18 of those technical skills, is something I focused on carefully
19 as well.

20 With that background, I will hear from the government.
21 Ms. Magdo.

22 MS. MAGDO: Thank you, your Honor. Your Honor has
23 obviously read our papers very closely and has accurately
24 summarized the government's position. Unless the court has
25 particular questions for the government, we would rest on our

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1 submission of last week.

2 THE COURT: Thank you, Ms. Magdo.

3 Ms. Kunstler? By the way, before you speak, I want to
4 thank both you and Ms. Kellman for your cooperation in
5 representing the defendant here, and in particular,
6 Ms. Kunstler, for your wisdom in selecting Ms. Kellman as an
7 assistant in this case and a sounding board for a strategy. I
8 know the principal responsibility in representing the defendant
9 has fallen on your shoulders, but I appreciate Ms. Kellman
10 making the commitment to be involved as well. Thank you.

11 Ms. Kunstler.

12 MS. KUNSTLER: Thank you, your Honor. I also very
13 much appreciate Ms. Kellman making herself available on this
14 case.

15 Your Honor, Maxim Chukharev is not the typical federal
16 defendant. I think the court knows this from reading our
17 papers. Born in Uzbekistan in the former Soviet Union, Mr.
18 Chukharev's parents risked everything and lost everything in
19 order to flee the persecution they experienced at home and in
20 particular the brutality that their sons faced on a day-to-day
21 basis. They brought their children to Costa Rica where they
22 had to start over. Mr. Chukharev was raised in impoverished
23 circumstances, but above all he was taught the importance of
24 family and the value of hard work. He worked hard all of his
25 life, all of his young life, from age 16 onward, to help his

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1 parents and to show them that he understood the value of the
2 sacrifice they made for him. And that really is one of the
3 real tragedies here and one that Mr. Chukharev painfully and
4 candidly acknowledges in his letter to the court. He says I
5 lost sight of what is important and turned my back on how I was
6 raised. And getting to know Mr. Chukharev over the ten months
7 that I have gotten to know him, I have seen this pain and this
8 shame firsthand in my dealings with him.

9 This is also not the typical federal criminal case.
10 What I mean by that is that Mr. Chukharev's involvement is not
11 typical. When he took a job at Liberty Reserve he believed it
12 to be a legitimate company; he thought he found a career, a
13 company that he could help build, something he could be proud
14 of. And that was one of the things that we talked about, him
15 saying to me this is something I wanted to point to my
16 children, that I helped build that.

17 Once was there, he learned that the company was not
18 what it seemed to be. They were building a hidden
19 administrative area to hide information from SUGEF. They were
20 doing business in the U.S., and they failed to register to do
21 business there. And Mr. Chukharev learned these things, and he
22 continued to work there, and he continued to help Liberty
23 Reserve do its business. And by doing this, Mr. Chukharev was
24 making a choice, and he knows that, and he knew that the choice
25 he was making was to help Liberty Reserve commit a serious

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1 crime against the United States.

2 The government recognizes that Mr. Chukharev's role
3 relative to that of his codefendants was minor. He wasn't an
4 owner. He didn't profit beyond his regular salary, which was
5 in line with Costa Rican mandated wage scales and industry
6 standards, and relatively low compared to what these salaries
7 are in the United States. And he didn't have the same level of
8 knowledge as his coconspirators in this case. What the court
9 correctly focuses on is that comparison, the comparison between
10 him and his codefendants, their roles and the statutory cap
11 here.

12 Further, Mr. Chukharev's entire life flies in the face
13 of his conduct in this case. He is a committed son and father.
14 He is a good friend. He is a person who cares for the people
15 around him, and a person who feels a personal responsibility
16 not only to take care of his own family but to be of service,
17 whether it be teaching senior citizens computer skills in his
18 community, or encouraging his friends to be their best selves,
19 or helping GED students, Spanish-speaking GED students in the
20 jail, which he has here, and whom your Honor has letters from.

21 The past 20 months have been very difficult for Mr.
22 Chukharev. As the court knows, the first half of his sentence
23 was spent in a living hell in a Costa Rican jail where people,
24 you had no room to move. I submitted two photographs that were
25 taken at the jail to give the court a sense of really how

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1 densely packed it was. During his time there, Mr. Chukharev
2 lost a tremendous amount of weight. When he came to this
3 country, he was in poor health, he was weak. He has here built
4 himself back up, but when I met him he was a very lethargic
5 person and a person deeply traumatized by the ordeal he had
6 undergone.

7 The conditions of Mr. Chukharev's confinement here in
8 the United States are considerably better, but what he doesn't
9 have here -- which he had there -- is his family. He spent
10 these past ten months totally isolated from his family. He
11 does have sitting in the audience here today Michael Simmons,
12 who is in the blue shirt in the second row, who is here with
13 his mother, whom he didn't know before his incarceration, but
14 who is a family friend, and who has of his own accord begun
15 visiting Maxim and spending time with him, and who in his
16 post-arrest context -- and who also has no experience with
17 people committing crimes, and was almost kind of wary about
18 getting to know Max under these circumstances, but who has been
19 impressed with the person he met, and who has also written a
20 letter to this court about his impression of Mr. Chukharev.

21 Your Honor, I stated this in my papers, but the 20
22 month sentence that Mr. Chukharev has already served is
23 essentially a 26 month sentence with credit for good time.
24 Given the history and characteristics of this defendant, and
25 the nature and circumstances of his criminal conduct, a

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1 sentence of 26 months is sufficient but not greater to meet the
2 goals of sentencing -- sufficient but not greater than
3 necessary, your Honor, to meet the goals of sentencing. Thank
4 you.

5 THE COURT: Thank you, Ms. Kunstler.

6 Mr. Chukharev, is there anything you would like to say
7 to me on your behalf in connection with this sentence?

8 THE DEFENDANT: Yes, your Honor. I'm a little
9 nervous. I'm sorry.

10 First of all, I wanted to thank you for reading
11 everything that my attorney has presented, for giving me a
12 chance to express myself. At the same time, I now personally
13 would like to apologize to this court, to the government of the
14 United States, and to my family. I want to say how sorry I am
15 for my criminal acts. There are no words to describe the
16 feeling of shame I am experiencing right at this moment.

17 I accept full responsibility for my actions, and I
18 will never do anything like this again. At the same time, I
19 wrote something because I don't think I can do it by memory.
20 This is from my own words. So you can judge me as a person the
21 way I am.

22 Your Honor, before my arrest I was researching carbon
23 free energy.

24 THE COURT: OK. Now, Mr. Chukharev, I'm going to ask
25 you, it's fine with me for you to read something, but I'm going

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1 to ask you to go slowly. Read it slowly.

2 THE DEFENDANT: Yes.

3 THE COURT: And keep your voice up.

4 THE DEFENDANT: Yes.

5 THE COURT: Thank you.

6 THE DEFENDANT: Your Honor, before my arrest I was
7 researching on carbon free energy or the ecologic source of
8 energy. Occasionally my father and my fiancée would help me
9 out to craft parts for the experiments in my projects. During
10 the last almost two years of my imprisonment, I had an
11 opportunity to read a lot of books. Some of them were science
12 books like math or physics, basic physics. And I came up with
13 new ideas for my research. Once I get back home, one of the
14 things I will immediately start working on will be the
15 development of these ideas. Perhaps one day I will also bring
16 something constructive into this world, into our society. In
17 the meanwhile, my plan is to show respect for the law and for
18 my family. I have to start from the ground. I have a lot to
19 catch up with, and I'm totally committed to that path forward.
20 Thank you, your Honor.

21 THE COURT: Thank you, Mr. Chukharev.

22 THE DEFENDANT: Finally, I would like to thank my
23 lawyer -- I think she is the best lawyer in the world -- and
24 Ms. Kellman, and my friend Michael and his mother. Thank you.

25 THE COURT: So, this is a sentence in which you weigh

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1 a lot of things on one side and then very serious criminal
2 conduct on the other.

3 On one side Mr. Chukharev was not living his life in a
4 way that was destined to involve him in criminal activity. He
5 went to school not as long as he would have liked because he
6 also worked hard to support his family, but he was a very
7 responsible member of his family, a good friend, someone who
8 worked hard in legitimate business, was furthering himself in
9 his career. And it's his technical skills that brought him
10 into contact with the Liberty Reserve folks, not because he was
11 searching out ways to commit crime.

12 So, I have a record that suggests to me that this
13 experience has been indeed sobering to Mr. Chukharev, and every
14 expectation that he will not make the judgments in the future
15 that he made in the past. Once he got involved in Liberty
16 Reserve, he understood that his skills were going to be put to
17 use and were being put to use to help a criminal enterprise
18 break the laws of the United States and deceive the government
19 authorities in Costa Rica, and Mr. Chukharev chose not to walk
20 away; he chose to continue. And because of his skills and the
21 importance to the way Liberty Reserve was managed, his
22 resources were of significant help to them. His job was an
23 important one, and as a result I'm fashioning a sentence
24 focused on the defendant as an individual but also
25 understanding the importance of the criminal activity in which

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1 he engaged, and the need to make a statement that involvement
2 of that kind is going to be punished.

3 Mr. Chukharev, please stand. I'm going to impose a
4 term of imprisonment of 36 months, to be followed by no term of
5 supervised release. I do not find that supervised release is
6 necessary here. I expect the defendant to be sent back to
7 Costa Rica where he intends to live his life.

8 I will add as a portion of his sentence the
9 requirement that he submit to deportation and not unlawfully
10 reenter this country.

11 I impose a special assessment of \$100.

12 I decline to impose a fine, being familiar with the
13 financial circumstances of Mr. Chukharev and his family and his
14 obligations once he returns home.

15 Counsel, is there any legal reason I cannot impose the
16 sentence that I have just described as stated? Mr. Magdo?

17 MS. MAGDO: No, your Honor.

18 THE COURT: Ms. Kunstler?

19 MS. KUNSTLER: No, your Honor.

20 THE COURT: I order the sentence I have described to
21 be imposed as stated.

22 Now, Mr. Chukharev, I need to advise you of your right
23 to appeal. I'm unaware of any ground for an appeal. You have
24 largely given up your right to appeal by your plea of guilty
25 and the guidelines stipulation, and I sentenced you to a

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1 sentence below your waiver of appeal rights in the guidelines
2 stipulation. Nonetheless, I am required by law to advise you
3 of the following: If you are unable to pay for the cost of an
4 appeal, you may apply for leave to appeal in forma pauperis.
5 Any notice of appeal must be filed within 14 days of the
6 judgment of conviction. You may be seated.

7 I believe there are open counts?

8 MS. MAGDO: Yes, your Honor. At this point the
9 government moves to dismiss any remaining open counts.

10 THE COURT: Any open counts against the defendant?

11 MS. MAGDO: Mr. Chukharev, he is charged in two
12 indictments, so it would be the open counts, namely Counts One
13 and Three against him in both indictments.

14 THE COURT: Yes. Any open counts in this or the
15 underlying indictment against Mr. Chukharev are dismissed.

16 Anything else we need to do?

17 MS. MAGDO: Not from the government. Thank you, your
18 Honor.

19 MS. KUNSTLER: Nothing from the defense. Thank you.

20 * * *